Now I know all about you now. Oh yes. I've been sitting in the back by that blower so I know it's hard to hear. I have a pretty strong voice, but if you can't hear me I'll shout even louder. I realize sitting through the hearing and thanking everybody from Ecology, coming to make the presentations for us, that my problem is that I know way too much about this permit. Or I thought I did. And as the presentation were being made by Keith, it occurred to me that even I still have some questions about how things were suppose to work and how they might work. And yes you want me to say my name, Kris Holm, Water Resource, _____. And I'm just kind of here making comments for myself. A little bit for the Association of Washington Business. Anyway I think that because this permit is so complex, that the devil is in the details. And even those of us who might be the most familiar with the development of this re-issued permit, are still trying to sort through some of those. So I urge everybody to really read the permit and try to figure out, gee – When does this work? When do I need a mixing zone? When I have effluent limit. Well, when am I going to have an effluent limit? So I just wanted to clarify a couple of things and then make some kind of general policy comments. First of all, in talking about the requirement now under the partial stay order for, which applies to new applicants under the 2000 permit which discharge listed pollutants to 303(d) listed waterbodies. I probably already lost people with the definition with what I'm trying to discuss. The issue of discharges to listed waterbodies and the ruling that was made by the Pollution Control Hearings Board, I think needs to be a little bit better understood in contexts. This is a stay order that is only in effect until the final permit is issued. This was not a ruling by the Board on a summary judgment motion. Now I know everybody's not lawyers, but I see a couple of you out there and I'm just trying to make the point that the precedent value of ruling on a stay order is perhaps not what Ecology might think it is or other people may think it is. And I urge everybody to look at the actual wording of this stay order. I know that's online. And also more importantly perhaps is to take a look at how Ecology is implementing the stay order. Take a look at what they are requiring. Those unfortunate few who have not sought coverage under the 2000 permit before the deadline and are trying to get coverage now as industrial dischargers. What kind of information Ecology's asking for and how they intend to enforce the stay order. I think it was important that that be said. One of the goals that Keith stated in issuing this re-issued permit, I don't call it a new draft, re-issued permit is to have a legally defensible permit. And so some of the comments that you heard me making during the presentation I think was where I felt perhaps Ecology was waffling a little bit on whether or not, you know, the compliance schedule proposal that's in the permit is legally defensible under the Clean Water Act. Or some of the other more innovative approaches to trying to fit a stormwater discharge into a traditional NPDES permit structure when you're requiring compliance with water quality standards. I guess I'd kind of urge Ecology to think about how they're presenting that to the public, especially regarding the compliance schedule and other parts that are controversial. I know this is the draft and not the final and you're looking for comments. On the other hand, you've also put yourself out there that this is a defensible permit. I have a couple other quick points regarding the listing issue which is one of the more controversial issues for 303(d) listed waterbodies and discharges to them. I urge everybody to take a look at how Ecology is proposing to deal with this issue. Not just for stormwater, but for other listed dis, other discharges. This is through their permit writer's manual and I'm sure there is information on-line about that as well. At least in the water quality partnership committee materials that have been posted recently by Ecology for those who are making a career out of following this issue. This is not just something that's going to apply here in stormwater industrial permits, but is general policy that Ecology is developing. That leads me to comment on the issue of listing for sediment quality standards or based on fish tissue

listings. Those with you familiar with the 303(d) list know that there are listings formed on this basis on exceedence of the narrative water quality standard for, based on fish tissue or the actual numeric sediment quality standards. Those waterbodies are listed as being limited for those parameters. I had really thought too much about it recently until the question was brought up. So how are you going to have to prove that you're not causing or contributing to a violation of or an exceedence of or whatever the language is we're using now of fish tissue criteria or sediment quality standard when it's not easily, you know you can't really say is my discharge contributing to that because there's no effluent limit that Ecology's able to set. I would, I think that's more of the response which is, because I've seen Ecology make this response in numerous other permits. We don't know how to set an effluent limit for you based on sediment standards so we're not going to. I think that response should be the same in the contexts of 303(d) listing. We don't know how to set a fish tissue standard so we're not going to set one in this stormwater permit either. Because the first thing that has to happen here is that Ecology gives you an effluent limit for the 303(d) listed criteria. How are they going to do that? You don't have to do that, they have to do that. One of my favorite things is kicking the issue back to the agency. And one of the other issues that I know is of a concern to Association of Washington Business because nobody's really brought this up to directly, but I know a lot of you are thinking about this is cost. Cost of sampling, cost of monitoring, cost of data reporting, cost of SWPPP development, cost of compliance of putting more BMPs in. Also just the need to show that you're not doing anything that's hurting water quality standards or exceeding standards. It's not a free ticket anymore. You're going to have to do the sampling and I urge everybody to look at the details there. If you have some cost data or information specifically provide that to Ecology and the rest of us because I think that's an important part of the discussion here. As is the issue of Endangered Species Act overlay here. Keith had me jump on him on that issue and I think that my comment then still holds which is a compliance of the permit with the Endangered Species Act or if an individual permittee with the Endangered Species Act is a very complicated issue. There's several memorandum of understandings between EPA and the agencies like NMPS, Fish and Wildlife floating around out there in which those federal agencies who we know are wiser and stronger than the state agencies of course. I'm being factitious. In trying to figure out how NPDES permits issued by states fit into this. Generally it's true that compliance with water quality standards equals compliance with ESA. But again the devil's in the details there. I wanted to talk about three, quickly, three big picture issues. I don't want to take up more than my time. Part of the reason that the development of any industrial stormwater discharge permit here by Ecology or any agency and part of the challenges I think EPA faced in issuing the 2000 multi-sector general permit which covers non-delegated states and I urge everybody to read that hundred and some page document is that using the NPDES program as it was envisioned under the Clean Water Act for stormwater permitting is not a good fit. The NPDES permit and the compliance scheme under the Clean Water Act and I'm thinking of things like mixing zones and compliance schedules and effluent limits and everything related to compliance with standards and how that is done in an NPDES were designed for constant flow discharges. Constant flow discharges. Stormwater, storm only. Didn't have any yesterday, have some today. How do you fit that kind of scheme into the NPDES permit? And that's a huge challenge and you can see that now talking about sampling. And how are you really going to get out there? Well, if I have a continuous industrial discharge I know that it's fine. I'm going to invest in an automatic sampler. I know that I can do some averaging so I'm not stuck with oops one time there's a spike. I get to average. The sampling schemes here no matter how much we try to work them and I think we're trying to do that, really it's never going to fit the way it does with continuous discharges. It's just not a good fit and that's part of the reason the development of this permit

is so challenging. Similarly, effluent limits in an NPDES permit based on water quality standards are not a good way to measure whether a discharge from a stormwater facility is causing or contributing to an exceedence of a water quality standard in a waterbody. Whether it's listed under 303(d) or yet to be listed or approaching exceeding the standard, it's not a good fit again because those of us, you know, water quality criteria geeks here know that many for example the aquatic life water quality criteria are based on exposure assumptions that are long term. There are not the short term spike type of exposure you get from stormwater. So this is a problem that EPA has acknowledged. Six years ago I went to a national conference on trying to develop national criteria for wet weather flows that really reflect actual impacts in the ambient water quality. And they don't. And that's part of the reason you see such a difficult fit here for setting effluent limits. Really being able to show you that there's a potential to cause or contribute to flows. And that _____ by the fact the sampling is a grab sample. Yet, if you look at the effluent limits being set for TMDL listed waterbodies, it's what? medium average, is that it? medium average? I mean how are you going to average a grab sample that you're taking once a month? So there's a whole lot of problems, things that don't fit in here. But you're forced into a legal construct of the permit which requires strict compliance at point of discharge for effluent limits for listed waterbodies. I'm not offering a whole lot of solutions here. I'm saving those for the paying clients, right Keith? This is part of the challenge here and I really urge everybody to look at this in that context. Look at some of the stuff EPA has written on the Multi-sector General Permit preamble. They address a lot of these issues. They don't have answer either. But I think it's important to understand them when you're looking at this permit. One of the other final things I'm going to talk about quickly is the challenge, kind of the poor downstream discharge point. When you're downstream from outside sources that you have no control over whether it's air deposition or off-site flow onto your property and you happen to be the guy with the discharge point and with the requirement to be in compliance with the industrial general permit. We've got to look at some ways with Ecology, with EPA of now that liabilities are becoming much more strict, BMPs are more costly and expensive, compliance is more costly and expensive, costly and expensive? costly and time-consuming that splitting off liability for those outside source contributions. Again, I don't have any great solutions but I think this is something we need to be working on with all dischargers who are facing these challenges. Thank you for listening to all that. Thanks.